PP v. ROMIKA CHE KAMARULZAMAN & ANOR

COURT OF APPEAL, PUTRAJAYA
AZMAN ABDULLAH JCA
MOHAMED ZAINI MAZLAN JCA
NOORIN BADARUDDIN JCA
[CRIMINAL APPEAL NO: W-05-219-05-2025]
3 OCTOBER 2025

Abstract – *Section 117 of the Criminal Procedure Code does not, in express terms or by necessary implication, stipulate that the investigating officer ('IO') for the case must personally attend and present the application for remand. The absence of the IO at the hearing does not compromise the integrity of the process or disadvantage the accused. The accused is still protected by the statutory and constitutional safeguards embedded in the law, and their rights are not diminished due to the IO's physical absence. To insist that only the IO directly assigned to the case may conduct such proceedings would be impractical, unduly burdensome, and can disrupt the smooth administration of criminal justice. Such a rigid interpretation would impair the operational efficiency of the police force and ultimately hinder the investigative process.*

CRIMINAL PROCEDURE: *Remand – Revision – Application for – Non-attendance of investigating officer – Whether invalidated or undermined fairness of remand proceedings – Whether physical presence of investigating officer mandatory at every remand application – Whether remand order consistent with provisions of ss. 110(3) and 117(1) of Criminal Procedure Code*

The respondents were arrested by the police on suspicion of committing offences under s. 30(3) of the Poisons Act 1952 ('Poisons Act') and s. 15(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). They were subsequently brought before the Magistrate Court, for remand proceedings under s. 117 of the Criminal Procedure Code ('CPC'). The remand application was made by Sergeant Major Aida, who appeared on behalf of the investigating officer ('IO') assigned to the case, Inspector Megat Nazmi. The Magistrate allowed the police's application and authorised the respondents to be remanded for two days. On the same day, the respondents requested that the High Court exercise its revisionary powers to review the remand order granted by the Magistrates' Court. The respondents raised three issues to support their application for revision: (i) question of law: the remand order was inconsistent with the provisions of ss. 110(3) and 117(1) of the CPC; (ii) the representative of the IO had no authority under s. 31A of the Poisons Act to make the remand application; and (iii) the remand application was baseless as it involved an investigation under s. 15(1)(a) of the DDA against two suspects. The High Court held that the remand proceedings against the

A respondents at the Magistrates' Court violated the provisions of s. 117(1) of the CPC and emphasised that the Magistrate should have dismissed the remand application since it was made by an officer not officially designated as the IO for the case. The High Court, therefore, held that the respondents' detention under the remand order was unlawful. Hence, this appeal by the
B appellant. The issues that arose were (i) whether s. 117(1) of the CPC required the IO assigned to the case to personally appear before the Magistrate in support of a remand application; and (ii) whether another police officer may lawfully do so in his stead.

Held (allowing appeal; setting aside decision of High Court)
C **Per Mohamed Zaini Mazlan JCA delivering the judgment of the court:**

(1) The statutory duty of the IO under s. 117 of the CPC is confined to two specific obligations: (i) to transmit to the Magistrate a copy of the relevant entries in the police diary; and (ii) to ensure that the accused is produced before the Magistrate. These obligations are both clear and
D exhaustive. Section 117 does not, in express terms or by necessary implication, stipulate that the IO for the case must personally attend and present the application for remand. The crucial safeguard lies in the transmission of the case diary, which enables the Magistrate to exercise judicial scrutiny on the necessity of further detention. (para 28)

E
(2) Where the police seek an extension of remand beyond the constitutional limit of 24 hours, they must demonstrate to the satisfaction of the Magistrate that investigations cannot reasonably be completed within that time and that there are sufficient grounds to believe the accusation or information is well-founded. This duty is discharged when the IO
F transmits the relevant diary entries for the Magistrate's evaluation. The operative word used by Parliament is 'transmit', a term that plainly denotes the act of forwarding or sending, and not the requirement of personal attendance. Had Parliament intended to make the physical presence of the IO mandatory, such a requirement would have been
G expressly stated. Thus, s. 117 does not oblige the IO to be present at every remand application. This will entail in adding words that are not found in the statute, and could lead to rigidity in the administration of justice, a result that Parliament could not have intended. (paras 29 & 30)

(3) The absence of the IO at the hearing did not compromise the integrity
H of the process or disadvantage the accused. The accused was still protected by the statutory and constitutional safeguards embedded in the law, and their rights were not diminished due to the IO's physical absence. What was crucial was that the remand application was backed by lawful and adequate grounds, subject to the Magistrate's independent
I judicial assessment. Therefore, there was no reason to conclude that the non-attendance of the IO invalidated or undermined the fairness of the remand proceedings. (para 34)

(4) An IO is often tasked with handling numerous cases simultaneously. In the discharge of their duties, an IO may also be required to attend court proceedings as witnesses, participate in official training programmes, or, may at times, be incapacitated due to illness or other unforeseen circumstances. The statutory requirement under art. 5(4) of the Federal Constitution and s. 117 of the CPC mandates that a suspect be produced before a Magistrate within 24 hours of arrest. Given this strict constitutional timeline, there would inevitably be situations where the IO in charge of the investigation is unable to appear personally before the Magistrate to support a remand application. To insist that only the IO directly assigned to the case may conduct such proceedings would be impractical, unduly burdensome, and could disrupt the smooth administration of criminal justice. Such a rigid interpretation would impair the operational efficiency of the police force and ultimately hinder the investigative process. Thus, the High Court had erred in its interpretation of s. 117 of the CPC. Allowing the ruling to stand would impose unnecessary rigidity on remand proceedings and prevent investigations from being conducted effectively. This misdirection in law necessitated appellate intervention. (paras 39-41)

Case(s) referred to:

Chong Yong Yew lwn. PP [2010] 6 CLJ 938 HC ***(refd)***

Dasthigeer Mohamed Ismail v. Kerajaan Malaysia & Anor [1999] 6 CLJ 317 HC ***(refd)***

Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal [2014] 9 CLJ 15 CA ***(refd)***

Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals [2022] 3 CLJ 177 FC ***(refd)***

Quek Qin Long & Yang Lain lwn. PP [2024] 10 CLJ 625 HC ***(refd)***

Re The Detention Of Muhammad Nasrul Naim Mohd Nazim [2025] 1 CLJ 796 HC ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 28(3), 110(3), 117(1), (3), 119(1), 177

Federal Constitution, art. 5(4)

Dangerous Drugs Act 1952, s. 15(1)(a)

Poisons Act 1952, ss. 30(3), 31A

For the appellant - Saiful Edris Zainuddin, Zaki Asyraf Zubir & Zander Lim Wai Keong; AG's Chambers

For the respondents - Collin Arvind Andrew & Shahlini Sree Kumar; M/s Collin's Law Chambers

Amicus Curiae - N Sivananthan Nithyanantham & Jhaimal Singh Korotana; Bar Council Malaysia

[Editor's note: For the High Court judgment, please see Romika Che Kamarulzaman & Satu Lagi lwn. Mustaffa Kamal Zulkefli [2025] CLJU 1241 (overruled).]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Mohamed Zaini Mazlan JCA:

Introduction

[1] This appeal concerns the interpretation and application of s. 117 of the Criminal Procedure Code ("CPC"), which regulates the procedure for remand of suspects following arrest. The central issue before us is whether only the investigating officer ("IO") directly in charge of an investigation may appear before the Magistrate to support a remand application, or whether another officer may lawfully do so in circumstances where the IO is unable to attend.

[2] The High Court, in its ruling, held that the strict requirement under s. 117 of the CPC mandates the personal attendance of the IO in charge. This interpretation, according to the appellant, has created significant operational difficulties for the police force and risks undermining the effectiveness of criminal investigations.

[3] We are therefore tasked in this appeal to determine whether the High Court's construction of s. 117 of the CPC was correct in law.

Brief Facts

[4] The respondents were arrested by the police on 5 May 2025 on suspicion of committing offences under s. 30(3) of the Poisons Act 1952 and s. 15(1)(a) of the Dangerous Drugs Act 1952. They were subsequently brought before the Jinjang Magistrates' Court the following day, for remand proceedings under s. 117 of the CPC.

[5] The remand application was made by Sergeant Major Aida, who appeared on behalf of the IO assigned to the case, Inspector Megat Nazmi. The learned Magistrate allowed the police's application and authorised the respondents to be remanded for two days. On the same day, the respondents' solicitors sent a letter to the Kuala Lumpur High Court, dated 6 May 2025, requesting that the High Court exercise its revisionary powers to review the remand order granted by the Magistrates' Court. The High Court agreed to conduct a review after reviewing the records of the remand proceedings from the Magistrates' Court, and heard the parties involved the following day.

The High Court's Decision

[6] The respondents raised three issues to support their application for revision. The issues presented were:

(i) question of law: The remand order is inconsistent with the provisions of s. 117(1) and s. 110(3) of the CPC;

(ii) the representative of the IO has no authority under s. 31A of the Poisons Act 1952 to make the remand application; and

(iii) the remand application is baseless as it involves an investigation under s. 15(1)(a) of the Dangerous Drugs Act 1952 against two suspects.

[7] The appellant, however, submitted that the application for revision has been rendered academic as the respondents had already been charged earlier in the day and are no longer under remand. However, the High Court referred to the Federal Court's judgment in *Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals* [2022] 3 CLJ 177 and held that it has a constitutional duty to assess the validity of a detention as long as the respondents were in custody at the time the application was filed. Therefore, the subsequent release or charging of the appellants does not make the application academic. Since the appellants were under remand when the application for revision was submitted, the High Court affirmed that it retains the jurisdiction to examine the legality of that remand.

[8] On the first issue raised by the respondents, the High Court opined that the wording of s. 117(1) of the CPC is unambiguous and must be given its literal interpretation. The High Court held that provisions of s. 117(1) of the CPC must be adhered to strictly, and that as the section stipulates that the IO making the investigation shall transmit to the Magistrate a copy of the entries in the diary and produce the accused before the Magistrate, that duty cannot be delegated to another police officer. The court also referred to two other High Court cases, namely *Quek Qin Long & Yang Lain lwn. PP* [2024] 10 CLJ 625 and *Re The Detention Of Muhammad Nasrul Naim Mohd Nazim* [2025] 1 CLJ 796. The High Court concurred with the decision in *Quek Qin Long* which held that an IO cannot delegate his duties under s. 117 of the CPC to another officer. In contrast, the High Court disagreed with the decision in *Muhammad Nasrul* where it was held that any officer with knowledge of the case who can respond to the Magistrate's queries may make the remand application.

[9] The High Court also referred to the Chief Justice's Practice Direction No. 11 of 2021 and highlighted that the practice direction itself stipulates that a remand application must be made by the IO. In conclusion, the High Court held that the remand proceedings against the respondents at the Magistrates' Court violated the provisions of s. 117(1) of the CPC. The High Court emphasised that the learned Magistrate should have dismissed the remand application since it was made by an officer not officially designated as the IO for the case.

[10] The High Court therefore held that the respondents' detention under the remand order was unlawful. Given these findings, the court determined that it was unnecessary to consider the two other issues raised by the respondents.

The Appeal

[11] The central issue in this appeal is whether s. 117(1) of the CPC requires the IO assigned to the case to personally appear before the Magistrate in support of a remand application, or whether another police officer may lawfully do so in his stead.

[12] The appellant's counsel argued that the High Court's interpretation of s. 117(1) was overly rigid and impractical, thus undermining the main purpose of the section. Learned counsel contended that as long as the essential requirements of the section are met, any police officer should be able to conduct the remand proceedings before the Magistrate. The essential requirements include:

(i) transmitting to the Magistrate a copy of the entries in the diary; and

(ii) producing the accused before the Magistrate.

[13] Learned counsel also drew parallels to 'The Chief Justice's Practice Direction No. 11 Year 2021', particularly r. 4, which outlines the same prerequisites. Rule 4 reads as follows:

> 4. Selaras dengan peruntukan seksyen 117 KTJ, Pegawai Penyiasat Polis hendaklah memastikan pematuhan kepada perkara-perkara yang berikut:
>
> (a) sebelum Permohonan Reman didengar di hadapan Majistret, dokumen-dokumen yang berikut telah difailkan melalui sistem e-Kehakiman:
>
> (i) Permohonan Reman;
>
> (ii) salinan diari siasatan yang lengkap di bawah seksyen 119 KTJ; dan
>
> (iii) apa-apa dokumen lain yang permohonan reman tersebut; dan berkaitan dengan
>
> (b) orang yang disyaki ("OYDS") dikemukakan di hadapan Majistret.

[14] Learned counsel emphasised that as long as the prerequisites outlined in s. 117(1) of the CPC and the relevant practice direction are met by the IO, there is no legal requirement for the IO to personally conduct the remand proceedings. Instead, any police officer knowledgeable about the case may handle them.

[15] Furthermore, it was argued that the High Court's strict interpretation of the phrase "police officer making the investigation" as exclusively referring to the IO in charge undermines the main purpose of s. 177 of the CPC. This phrase is neither clearly defined in the CPC nor in the applicable Practice Direction. Learned counsel argued that the phrase can have two interpretations: it may refer either to the IO assigned to the case or to any IO present during the remand proceedings who is capable of making the application on behalf of the assigned IO. It was submitted that even if the

interpretation of the phrase is to be taken strictly, meaning that only the assigned IO can make the remand application, there is no requirement for the IO to be physically present during the remand proceedings. The IO is only obligated to provide a copy of the police diary to the Magistrate and ensure the attendance of the accused. The primary focus of s. 117 is to allow the police to extend the remand order in order to complete the investigation, rather than emphasising the identity of the officer appearing before the Magistrate.

[16] In conclusion, the appellant's learned counsel urged the court to consider the practical challenges faced by the police if only the IO for the case is required to appear before the Magistrate. Requiring the IO to do so within 24 hours of an arrest is not feasible, as the IO manages multiple cases and faces operational constraints, particularly due to a lack of sufficient manpower within the police force.

[17] Learned counsel for the appellant also submitted that this court should favour the High Court's judgment in the case of *Re Mohd Nasrul Naim* (*supra*), which held that any police officer may conduct remand proceedings, provided that the officer is authorised and knowledgeable about the circumstances of the remand in order to adequately respond to the Magistrate's questions.

[18] Conversely, learned counsel for the respondent argued that the wordings in s. 117 of the CPC is clear and unambiguous, and emphasised that the IO assigned to the case has the responsibility to be present during the remand proceedings. Learned counsel for the respondents submitted that the ordinary and natural meaning of the section should not be compromised for the sake of convenience, and that the literal meaning should be upheld.

[19] It was argued that the phrase "police officer making the investigation" is clear and refers explicitly to the IO in charge of that case, rather than any other police officer. Additionally, learned counsel emphasised that s. 117 should be considered in conjunction with ss. 117(3) and 119(1) of the CPC, where the phrase "police officer making the investigation" appears again. These sections clearly assign the duty to the IO for that specific case only.

[20] It was also argued by the respondents' counsel that s. 117(1) of the CPC must be strictly interpreted, as it infringes upon an accused person's liberty. An accused can be detained for up to seven or 14 days under an order issued by a Magistrate. The counsel contended that s. 117(1) of the CPC was amended in 2006 to prevent the police from misusing their powers through the practice of "arrest first, investigate later", and to curb the issue of chain remands.

[21] The submissions made by the Bar Council, acting as *amicus curiae*, are largely in agreement with the arguments presented by the respondents.

A

Findings

[22] A suspect arrested by the police can only be held in custody for a maximum of 24 hours, excluding the time taken to travel from the arrest location to the Magistrate's court, as outlined in s. 28(3) of the CPC. If the police requires additional time to complete their investigation, they must apply to a Magistrate for an extension of the suspect's detention. This period of detention while the investigation is ongoing is known as "remand". The statutory framework governing remand proceedings is set out in s. 117 of the CPC:

> Procedure where investigation cannot be completed within twenty-four hours
>
> 117. (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by s. 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.
>
> (1A) The Public Prosecutor may appear in any application made under this section.
>
> (2) The Magistrate before whom an accused person is produced under this section may, whether he has or has no jurisdiction to try the case, authorize the detention of the accused in such custody as follows:
>
> (a) if the offence which is being investigated is punishable with imprisonment of less than fourteen years, the detention shall not be more than four days on the first application and shall not be more than three days on the second application; or
>
> (b) if the offence which is being investigated is punishable with death or imprisonment of fourteen years or more, the detention shall not be more than seven days on the first application and shall not be more than seven days on the second application.
>
> (3) The officer making the investigation shall state in the copy of the entries in the diary referred to in subsection (1), any period of detention of the accused immediately prior to the application, whether or not such detention relates to the application.
>
> (4) The Magistrate, in deciding the period of detention of the accused person, shall take into consideration any detention period immediately prior to the application, whether or not such detention relates to the application.
>
> (5) The Magistrate in deciding the period of detention of the accused shall allow representations to be made either by the accused himself or through a counsel of his choice.

(6) If the Magistrate has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.

(7) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

[23] The Chief Justice's Practice Direction No. 11 of 2021, which came into force on 10 September 2021, is to be read in conjunction with s. 117 of the CPC. The Practice Direction provides comprehensive guidance on the conduct of remand proceedings, and is reproduced in full as follows:

ARAHAN AMALAN KETUA HAKIM NEGARA BILANGAN 11 TAHUN 2021

PENGENDALIAN PROSIDING PERMOHONAN REMAN DIBAWAH SEKSYEN 117 KANUN TATACARA JENAYAH

PADA menjalankan kuasa yang diberikan oleh seksyen 107A Akta Mahkamah Rendah 1948 [Akta 92], saya, setelah berunding dengan YAA Presiden Mahkamah Rayuan, YAA. Hakim Besar Mahkamah Tinggi di Malaya dan YAA Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak, mengeluarkan Arahan Amalan ini bagi mengemas kini tatacara dan memastikan keseragaman amalan berhubung dengan pengendalian prosiding Permohonan Reman di bawah seksyen 117 Kanun Tatacara Jenayah [Akta 593] ("KTJ") bagi Mahkamah di seluruh Malaysia seperti yang berikut:

PEMAKAIAN ARAHAN AMALAN

2. Arahan Amalan ini terpakai bagi pengendalian prosiding Permohonan Reman di bawah seksyen 117 KTJ di seluruh Malaysia.

TAFSIRAN

3. Dalam Arahan Amalan ini, melainkan jika konteksnya menghendaki makna yang lain:

"Majistret" mempunyai erti yang sama sebagaimana yang diperuntukkan dalam Akta Mahkamah Rendah 1948;

"Permohonan Reman" ertinya apa-apa permohonan yang dikemukakan oleh Pegawai Penyiasat Polis di hadapan Majistret bagi mendapatkan suatu perintah tahanan di bawah seksyen 117 KTJ;

"sistem e-Kehakiman" ertinya mana-mana sistem aplikasi Mahkamah yang dibangunkan oleh Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia bagi urusan dan prosiding Mahkamah.

A TATACARA PENGENDALIAN PROSIDING PERMOHONAN REMAN DIBAWAH SEKSYEN 117 KANUN TATACARA JENAYAH

4. Selaras dengan peruntukan seksyen 117 KTJ, Pegawai Penyiasat Polis hendaklah memastikan pematuhan kepada perkara-perkara yang berikut:

B (a) sebelum Permohonan Reman didengar di hadapan Majistret, dokumen-dokumen yang berikut telah difailkan melalui sistem e-Kehakiman:

(i) Permohonan Reman;

(ii) salinan diari siasatan yang lengkap di bawah seksyen 119 KTJ; dan

C (iii) apa-apa dokumen lain yang berkaitan dengan permohonan reman tersebut; dan

(b) orang yang disyaki ("OYDS") dikemukakan di hadapan Majistret.

D 5. Sebelum pengendalian prosiding Permohonan Reman dimulakan, OYDS hendaklah mengesahkan kepada Majistret perkara-perkara yang berikut:

(a) bagi OYDS yang mempunyai peguam, OYDS telah diberi peluang untuk menghubungi peguamnya; dan

E (b) bagi OYDS yang belum melantik peguam, OYDS telah menyatakan hasrat untuk diwakili oleh mana-mana peguam pilihannya.

6. Bagi OYDS yang tidak diwakili oleh peguam atau tidak berkeupayaan untuk melantik peguam, OYDS tersebut akan dimaklumkan oleh Majistret akan hak OYDS untuk mendapatkan khidmat bantuan guaman daripada Yayasan Bantuan Guaman Kebangsaan ("YBGK") sekiranya F OYDS memenuhi syarat-syarat yang berikut:

(a) OYDS adalah seorang warganegara; dan

(b) OYDS tidak disiasat di bawah mana-mana undang-undang pencegahan, penculikan dan melarikan orang.

G 7. Bagi maksud perenggan 5 dan 6, Pegawai Penyiasat Polis hendaklah memastikan bahawa, bagi OYDS yang:

(a) telah melantik peguam, peguam yang mewakili OYDS telah dihubungi;

H (b) belum melantik peguam, tetapi berhasrat untuk melantik peguam pilihannya sendiri, peguam tersebut telah dihubungi; atau

(c) berhasrat untuk mendapatkan perkhidmatan peguam YBGK, pihak YBGK telah dihubungi,

dan peguam tersebut telah dimaklumkan agar hadir bagi tujuan I pengendalian prosiding Permohonan Reman tersebut.

8. Tertakluk kepada perenggan 7, pengendalian prosiding Permohonan Reman hendaklah ditangguhkan kepada suatu tempoh masa yang munasabah, dalam hari yang sama, bagi membolehkan peguam hadir untuk mewakili OYDS.

9. Walau apa pun peruntukan dalam perenggan 8, pengendalian prosiding Permohonan Reman akan diteruskan sekiranya:

(a) OYDS tidak mahu diwakili oleh peguam dan/atau enggan mendapatkan khidmat bantuan guaman YBGK; atau

(b) tiada peguam yang hadir setelah tempoh masa munasabah diberikan.

10. Semasa mengendalikan prosiding Permohonan Reman, Majistret hendaklah dimaklumkan oleh:

(a) Pegawai Penyiasat Polis berkaitan dengan status Permohonan Reman tersebut sama ada ia adalah suatu Permohonan Reman baharu atau lanjutan;

(b) OYDS berkaitan dengan layanan terhadapnya semasa dalam tahanan pihak polis; dan

(c) OYDS berkaitan dengan keadaan kesihatannya.

11. Bagi maksud perenggan 10(c), sekiranya Majistret mendapati bahawa OYDS memerlukan rawatan, Pegawai Penyiasat Polis hendaklah memastikan bahawa OYDS tersebut dibawa ke hospital bagi tujuan pemeriksaan dan rawatan yang sewajarnya.

12. Semasa pengendalian prosiding Permohonan Reman, Peguam OYDS hendaklah mengemukakan representasi kepada Majistret.

13. Tanpa menjejaskan kuasa dan budi bicara untuk mempertimbangkan Permohonan Reman serta menetapkan tempoh bagi apa-apa perintah reman yang akan diberikan, Majistret dalam menjalankan kuasanya boleh membuat rujukan kepada keputusan-keputusan kes Mahkamah Atasan yang terkini dan Bench Book (Criminal Law) yang dikeluarkan oleh Badan Kehakiman Malaysia yang menyentuh mengenai isu reman.

SUSUNAN KEUTAMAAN BAGI PENGENDALIAN PROSIDING PERMOHONAN REMAN DALAM KETIADAAN MAJISTRET

14. Dalam ketiadaan Majistret, prosiding Permohonan Reman yang melibatkan siasatan berkenaan apa-apa kesalahan jenayah:

(a) yang boleh dihukum dengan hukuman mati atau penjara untuk tempoh 14 tahun atau lebih;

(b) yang melibatkan OYDS yang merupakan individu berprofil tinggi;

(c) di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694]; dan

(d) yang disifatkan sebagai berkepentingan awam,

hendaklah dikendalikan oleh Majistret *ex-officio* mengikut keutamaan seperti yang berikut:

(a) Hakim Mahkamah Sesyen;

(b) Timbalan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);

A (c) Penolong Kanan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);

(d) Penolong Kanan Pendaftar Mahkamah Rendah; atau

(e) mana-mana pegawai lain seperti yang disenaraikan di bawah Jadual Keempat Akta Mahkamah Rendah 1948.

B

LOKASI DAN HARI PENGENDALIAN PROSIDING PERMOHONAN REMAN

15. Semua prosiding Permohonan Reman hendaklah dikendalikan:

(a) di Mahkamah atau di mana-mana pusat tahanan yang telah
C diwartakan untuk tujuan reman; dan

(b) pada setiap hari termasuk hari cuti hujung minggu dan cuti umum.

TARIKH PERMULAAN KUAT KUASA

16. Arahan Amalan ini mula berkuat kuasa pada 15 September 2021.

D

PEMBATALAN

17. Arahan Amalan Ketua Hakim Negara Bil. 3/2003 Perintah Penahanan di bawah Seksyen 117 Kanun Prosedur Jenayah (KPJ) dan perenggan 2A Pekeliling Ketua Pendaftar Bil. 1 Tahun 2012 (Garis Panduan Reman dan Pengendalian Kes-Kes Jenayah Selaras Dengan Penubuhan Yayasan
E Bantuan Guaman Kebangsaan) adalah dibatalkan.

TUN TENGKU MAIMUN BINTI TUAN MAT

Ketua Hakim Negara Istana Kehakiman Putrajaya

[24] The primary purpose of a remand is to allow the police additional time
F to complete their investigations. A remand is a temporary detention ordered by a Magistrate for this purpose.

[25] It is important to approach remand proceedings and any resulting orders with seriousness, as they concern the fundamental right to an individual's freedom: *Dasthigeer Mohamed Ismail v. Kerajaan Malaysia & Anor*
G [1999] 6 CLJ 317. Unlike an individual convicted after a trial, a person remanded is presumed innocent. Every day spent in custody constitutes a deprivation of liberty, and such deprivation must therefore be strictly justified in accordance with the law.

H **[26]** It is therefore incumbent upon the police to satisfy the Magistrate as to the necessity of a remand order. This is achieved through the production of the police diary, the contents of which are prescribed under s. 119(1) of the CPC. The importance of the diary in remand proceedings cannot be overstated. When a Magistrate exercises powers of remand under s. 117 of the CPC, the Magistrate is engaged in a judicial function that obliges him to
I scrutinise whether the circumstances of the case justify continued detention. This principle was firmly established in *Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal* [2014] 9 CLJ 15. Accordingly, the

failure to produce the diary before the Magistrate will invalidate the remand application. Consequently, any remand order issued without the diary being provided will also be considered unlawful.

[27] In addition, s. 117 of the CPC prescribes several other mandatory safeguards, including the requirement that the accused be physically produced before the Magistrate and the obligation on the Magistrate to record written reasons should a remand be granted. We will not address these other requirements here, as the central issue in this appeal is whether the IO in charge of the case must personally be present during remand proceedings.

[28] We have carefully examined s. 117(1) of the CPC to determine whether it imposes a mandatory requirement for the presence of the IO at remand proceedings. The operative words of the provision are: "the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate". From these wordings, we are not persuaded that Parliament intended to make the physical presence of the IO mandatory. In our judgment, the statutory duty of the IO under s. 117 of the CPC is confined to two specific obligations:

(i) to transmit to the Magistrate a copy of the relevant entries in the police diary; and

(ii) to ensure that the accused is produced before the Magistrate.

These obligations are both clear and exhaustive. Section 117 does not, in express terms or by necessary implication, stipulate that the IO for the case must personally attend and present the application for remand. The crucial safeguard lies in the transmission of the case diary, which enables the Magistrate to exercise judicial scrutiny on the necessity of further detention.

[29] Where the police seek an extension of remand beyond the constitutional limit of 24 hours, they must demonstrate to the satisfaction of the Magistrate that investigations cannot reasonably be completed within that time and that there are sufficient grounds to believe the accusation or information is well-founded. This duty is discharged when the IO transmits the relevant diary entries for the Magistrate's evaluation. The operative word used by Parliament is "transmit", a term that plainly denotes the act of forwarding or sending, and not the requirement of personal attendance. Had Parliament intended to make the physical presence of the IO mandatory, such a requirement would have been expressly stated.

[30] We are therefore unable to accept the argument that s. 117 of the CPC obliges the IO to be present at every remand application. This will entail in adding words that are not found in the statute and could lead to rigidity in the administration of justice, a result that Parliament could not have intended.

[31] We further observe that there are likewise no express provisions in the Practice Direction No. 11 of 2021 requiring the presence of the IO during remand proceedings. The Practice Direction, which came into force on 10 September 2021, was intended to streamline and modernise the procedure for remand applications. Its requirements substantially mirror those set out in s. 117 of the CPC. Specifically, it provides that the relevant documents, namely, the police diary entries and supporting materials, must be transmitted by the IO and filed through the court's e-Kehakiman system. The emphasis is thus placed upon the timely and proper transmission of documentary materials for the Magistrate's scrutiny, rather than upon the physical attendance of the IO before the Magistrate. In our view, the Practice Direction reinforces, rather than alters, the statutory position under s. 117 of the CPC.

[32] The absence of the IO during remand proceedings does not jeopardise the liberty of the accused or undermine the constitutional guarantees provided under art. 5 of the Federal Constitution. It is important to note that s. 117 of the CPC includes safeguards designed to protect individuals against arbitrary detention. The requirement for the accused to be presented before the Magistrate, the obligation to submit relevant diary entries under s. 119, and the duty of the Magistrate to document reasons in writing if a remand is granted collectively serves as a check and balance against any abuse of power.

[33] When presiding over a remand application, the Magistrate is not merely acting as a rubber stamp for the police. Instead, the Magistrate performs a judicial function that requires thorough examination of the application and the supporting materials. The exercise of this judicial discretion does not depend on the personal presence of the IO but rather on the adequacy and credibility of the investigation and the circumstances presented. The entries in the police diary, submitted in accordance with the CPC, form the central basis for the Magistrate's determination of whether further detention is warranted.

[34] The absence of the IO at the hearing does not compromise the integrity of the process or disadvantage the accused. The accused is still protected by the statutory and constitutional safeguards embedded in the law, and their rights are not diminished due to the IO's physical absence. What is crucial is that the remand application is backed by lawful and adequate grounds, subject to the Magistrate's independent judicial assessment. Therefore, we find no reason to conclude that the non-attendance of the IO invalidates or undermines the fairness of the remand proceedings.

[35] The rights of the accused are well-protected under s. 117 of the CPC. A key protection is the requirement for the accused to be presented before the Magistrate during remand proceedings, ensuring transparency and

accountability in the process. Additionally, the accused has the right to be represented by legal counsel, who can raise objections and challenge the necessity of the remand.

[36] The Magistrate has a statutory duty to carefully examine the application and assess whether continued detention is justified. If the order for remand is granted, the Magistrate is required to provide written reasons for this decision. These protections are further strengthened by art. 5(4) of the Federal Constitution, which allows the Magistrate to extend the detention period beyond the initial 24 hours only if the circumstances of the case justify such an extension.

[37] Given these safeguards, we find no merit in the argument presented by the respondents that allowing officers other than the IO to handle the remand application would undermine individual liberty or promote the troubling practice of "arrest first, investigate later". This argument fails to recognise that the essential safeguards depend on judicial oversight by the Magistrate, rather than the personal presence of the IO. As long as the statutory requirements are met and the Magistrate is in a position to exercise informed judicial discretion, the fairness and integrity of the process are preserved.

[38] We therefore approve the decisions made by the High Court in the cases of *Muhammad Nasrul Naim* (*supra*) and *Chong Yong Yew lwn. PP* [2010] 6 CLJ 938. In both of these cases, the courts were clear in holding that the physical presence of the IO at remand proceedings is not a mandatory requirement under s. 117 of the CPC.

Conclusion

[39] We are mindful of the appellant's concerns arising from the decision of the High Court, particularly its impact on the practical and operations of the police force. It is common knowledge that an IO is often tasked with handling numerous cases simultaneously. In the discharge of their duties, an IO may also be required to attend court proceedings as witnesses, participate in official training programmes, or, may at times, be incapacitated due to illness or other unforeseen circumstances.

[40] The statutory requirement under art. 5(4) of the Federal Constitution and s. 117 of the CPC mandates that a suspect be produced before a Magistrate within 24 hours of arrest. Given this strict constitutional timeline, there will inevitably be situations where the IO in charge of the investigation is unable to appear personally before the Magistrate to support a remand application. To insist that only the IO directly assigned to the case may conduct such proceedings would be impractical, unduly burdensome, and could disrupt the smooth administration of criminal justice. Such a rigid interpretation would impair the operational efficiency of the police force and ultimately hinder the investigative process.

A **[41]** We are therefore of the view that the High Court erred in its interpretation of s. 117 of the CPC. Allowing the ruling to stand would impose unnecessary rigidity on remand proceedings and prevent investigations from being conducted effectively. This misdirection in law necessitates appellate intervention. The appeal is allowed and the decision
B the High Court is therefore set aside.

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